



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

TEXAS ORTHOPEDIC HOSPITAL
c/o HOLLOWAY & GUMBERT
3701 KIRBY DRIVE, SUITE 1288
HOUSTON TX 77098-3926

Carrier's Austin Representative Box

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MFDR Date Received

June 26, 2006

Respondent Name

GRAY INSURANCE CO INC

MFDR Tracking Number

M4-06-6830-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated June 23, 2006: "...The total sum billed was \$47,750.51. There was no on-site audit performed by the insurance carrier...Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...the fees paid by Gray Insurance Company do not conform to the reimbursement section of Rule 134.401...In closing, it is the position of Texas Orthopedic Hospital that all charges relating to the admission of [injured worker] are due and payable as provided for under Texas law and the Rules of the Division..."

Amount in Dispute: \$26,496.09

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated July 14, 2006: "The Requestor asserts it is entitled to reimbursement in the amount of \$32,062.96, which is 75% of the total charges. Requestor has not shown entitlement to this alternative, exceptional method of calculating reimbursement and has not otherwise properly calculated the audited charges."

Respondent's Supplemental Position Summary Dated July 26, 2006: "This letter is filed as a supplemental response to the Request for Medical Dispute resolution requested by Texas Orthopedic Hospital..."

Respondent's Supplemental Position Summary Dated September 9, 2011: "Based upon Respondent's initial and all supplemental response, and in accordance with the Division's obligation to adjudicate the payment, in accordance with the Labor Code and the Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception."

Responses Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

| Disputed Dates | Disputed Services | Amount In Dispute | Amount Due |
|-----------------------------------|-----------------------------|-------------------|------------|
| July 7, 2005 through July 9, 2005 | Inpatient Hospital Services | \$26,496.09 | \$442.47 |

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- W10 – No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology.
- W1 – Payment based on the assigned Per Diem amount per the 1997 Texas Inpatient Hospital Fee Guideline.
- B15 – Payment adjusted because this procedure/service is not paid separately.
- W1 – Implantables reimbursed as COST +10%

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the

carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$42,750.51. The division concludes that the total audited charges exceed \$40,000.

2. The requestor in its original position statement asserts that “Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor (‘SLRF’) of 75%...” The requestor presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor failed to discuss or demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor failed to discuss the particulars of the admission in dispute that constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above, the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was two days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of two days results in an allowable amount of \$2,236.00.
 - 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
 - Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

| Rev Code | Itemized Statement Description | Cost Invoice Description | UNITS / Cost Per Unit | Total Cost | Cost + 10% |
|----------|--------------------------------|--------------------------------------|-----------------------|------------|------------|
| 278 | SNI RNG FUL 155 | Taylor spatial frame full ring 155mm | 3 @ \$451.00 | \$1353.00 | \$1488.30 |
| | SNI FIX BOLT SLOT | Wire fixation bolt slotted | 13 @ \$15.25 | \$198.25 | \$218.08 |
| | SNI BOLT 16MM | Bolt 16mm | 2 @ \$1.09 | \$2.18 | \$2.40 |
| | SNI ANCH 4MM | Washer 4.0mm fixation bolt | 4 @ \$5.88 | \$23.52 | \$25.87 |
| | SNI NUT 10MM | Nut 10mm | 32 @ \$1.24 | \$39.68 | \$43.65 |
| | SNI NUT 4 PT D/C | 4 pt distraction/cprsn counter | 1 @ \$23.35 | \$23.35 | \$25.69 |
| | SNI WIRE OLV 1.8 | Not supported | 4 | NA | NA |

| | | | | | |
|-----------------|--------------------|--------------------------------------|--------------|-----------|-----------|
| 278 | SNI WIRE 1.8 X 370 | Wire bayonet pt cort 1.8mm dia 370mm | 3 @ \$22.06 | \$66.18 | \$72.80 |
| 278 | SNI ROD THR 200 | Threaded rod 200mm | 4 @ \$12.81 | \$51.24 | \$56.36 |
| | SNI SUPRT MAL3H | Male support 3 holes | 1 @ \$39.10 | \$39.10 | \$43.01 |
| | SNR CUBE RANCH 2H | 2 hole ranch cube | 1 @ \$71.86 | \$71.86 | \$79.05 |
| | SNR CUBE RANCH 3H | 3 hole ranch cube | 1 @ \$79.20 | \$79.20 | \$87.12 |
| | SNR SLEEVE CENTR 6 | 6mm centering sleeve | 2 @ \$49.00 | \$98.00 | \$107.80 |
| | SNRI PIN HF 6X35 | Titanium half pin 6mmx35mm | 1 @ \$61.27 | \$61.27 | \$67.40 |
| | SNI PIN HF 6X45 | Not supported | 1 @ | NA | NA |
| | SNI STRUT MED | Taylor spatial strut medium | 4 @ \$328.00 | \$1312.00 | \$1443.20 |
| | SNI BOLT 12MM | 12mm bolt | 4 @ \$2.85 | \$11.40 | \$12.54 |
| TOTAL ALLOWABLE | | | | \$3773.26 | |

The division concludes that the total allowable for this admission is \$6009.26. The respondent issued a total payment of \$5,566.79. Based upon the documentation submitted, additional reimbursement in the amount of \$442.47 is recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to discuss and demonstrate that the disputed inpatient hospital admission involved unusually extensive and unusually costly services. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The division hereby ORDERS the respondent to remit to the requestor the amount of \$442.48 plus applicable accrued interest per 28 Texas Administrative Code §134.803 due within 30 days of receipt of this Order.

Authorized Signature

Signature

Medical Fee Dispute Resolution

December 2012

Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.